

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Michael Gold, c/o Attorney Peter MacConnell
Mr. Gold's address is 546 North East 31st Street, Miami, FL 33137

Date Application filed with the Town Clerk: December 22, 2004

Nature of request: The applicant seeks a Special Permit to renew ZBA FY2002-00034, approval of two flag lots, under Sections 3.2832 and 6.3 of the Zoning Bylaw, at 315 Potwine Lane (Map 23A, Parcel 21, R-O and R-LD/FC Zones)

Legal notice: Published on January 12th and 19th, 2005 in the Daily Hampshire Gazette and sent to abutters on January 10, 2005.

Board members: Tom Simpson, Ted Rising, Susan Pynchon

Submissions: The applicant submitted a site plan of the two flag lots. The plan was prepared for Alice E. Walas by Randall Izer, and dated January 16, 2003. The plan was stamped "Approval under the Subdivision Control Law, not Required" (ANR) and signed by Frank McNerney, Planning Board Chair, on February 5, 2003.

The applicant also submitted a letter from Jennifer Walas Cavagnac, administrator of the Walas estate that formerly owned both flag lots. Ms. Cavagnac authorized the applicant to apply for renewal of the Special Permit for the flag lot still owned by the Walas estate. Mr. Gold now owns the other.

Zoning staff submitted a memorandum dated January 21, 2005 outlining the farmland conservancy zoning requirements, the wetlands delineation and the order of conditions issued by the Conservation Commission on the parcels.

Site Visit: January 25, 2005

Attorney MacConnell met the Board at the site. The two lots under consideration are flat and next to an open farm area in South Amherst. Potwine Lane is lightly settled, and has conservation land as well as farmland. The poles of the two lots abut one another. The lots are near Middle Street, where the Town sewer lines were extended recently.

Public Hearing: January 27, 2005

Attorney MacConnell represented the applicant at the hearing. He stated that the Board had approved the previous permit request for the two flag lots, ZBA FY2002-00034. Since no building had occurred within the two years as required by the Zoning Bylaw, the permit

has expired.

The only changes on the lots since the last application are:

- 1) Town water and sewer lines have been extended to the lots
- 2) Mr. Gold now owns the westerly lot; the easterly lot is part of the Walas estate..
- 3) Silt fencing has been installed on the westerly boundary of Mr. Gold's lot, a condition of the Conservation Commission wetlands hearing,
- 4) A drainage easement has been added on Mr. Gold's lot.
- 5) A driveway was installed for the two lots.

Mr. MacConnell submitted a memo from Jennifer Walas Cavagnac, dated January 26, 2005, executor of the Walas estate, authorizing Mr. Gold to petition for renewal of the Walas flag lot as well as his own under this application. That is, Mr. MacConnell is representing both applicants. He stated that a special permit is not personal - applicants can apply for permits on land owned by another person. Moreover, the proposed uses are the same and can be grouped together.

Mr. MacConnell stated that the lots meet all the dimensional requirements of the Zoning Bylaw, Sections 3.283 for residential development in a Farmland Conservation (FC) District, Table 3, Dimensional requirements for flag lots in an FC district and Section 10.38, findings required of all Special Permits. That is:

- Both lots have 40.13 feet of frontage along Potwine, with the access strip in the R-O zoning district. The pole length is 200.67 feet, less than the 400 ft. maximum allowed in Section 6.33 of the Bylaw.
- The buildable portions of the parcels contain a circle with 80 ft. diameter, which is required in an FC overlay district.
- The main bodies of the lots contain 30,000 sq. ft. each, the maximum allowed in the FC district, and the building circle is the required 80 feet for the FC district.
- The lots are suitably located in the residential neighborhood for single family residences; they will not be a hazard to abutters, and adequate facilities will be provided (Section 10.38 of the Zoning Bylaw).

Mr. MacConnell submitted a list of reasons, from his perspective, of why the application should be granted for single family homes; he followed the format of Section 10.38.

Tom Simpson inquired about Parcel A on the submitted site plan, which is adjacent to Mr. Gold's flag lot and directly to the south. Mr. MacConnell stated that it is land-locked with no frontage, and is unbuildable due to the extensive wetlands on it. Mr. MacConnell did say however, that Mr. Gold owns lot 5, lot 4 and Parcel A, which are shown on the site plan as three properties in a row, north to south. Lot 5 contains 36,973 sq. ft. in an R-O district which requires 30,000 sq. feet. Lot 4 and Parcel A are in the FC overlay district. All three properties have wetlands on them, so that it may be impossible to configure the lots differently.

Ted Rising inquired about the driveways, since the two 40-foot poles are adjacent to one another and go back to mirror-image lots. Mr. Rising stated that one driveway should be sufficient in this case. Mr. MacConnell replied that the Bylaw requires a shared driveway for two adjacent lots with access strips adjacent to each other at the street line (Section 7.703.) Moreover, such a driveway can more readily meet the fire code, with adequate space for emergency vehicles to enter and turn.

One member of the public participated in the hearing. John Dayton, 281 Potwine Lane, asked to look at the submitted map of the parcels. After observing the access strips and wetland delineations, he had no comment.

Ted Rising moved to close the public hearing. Susan Pynchon seconded the motion and the Board voted unanimously to close the hearing.

Public Meeting:

The Board agreed that little had changed since the flag lots were approved two years ago. They also noted that they would require a shared driveway and a Management Plan for upkeep of the common driveway as part of the permit.

Findings:

Under Section 6.3, Flag Lots, and Section 3.2832, Farmland Conservation, the Board finds that all dimensional requirements are met. For both parcels, the frontage is 40.13 feet, the pole length is 200.67 feet and the lot size is 30,000 square feet.

Under Section 10.38 of the Zoning Bylaw, Specific Findings, the Board finds that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, given that Potwine Lane contains single-family and two-family homes on varying size lots. The restriction of the lot size in a FC district protects the agricultural land as much as possible.

10.383 & 10.387– The proposal would not be a substantial inconvenience or hazard to vehicles or pedestrians, in that the shared, straight driveway has good sightlines in both directions. Access is convenient, and the driveway intersects the street line at a ninety degree angle.

10.384 & 10.389 – Adequate facilities are provided in that water and sewer is provided to the site. The single-family residences that will be constructed should not present any unusual issues relative to storage, waste or surface drainage.

10.390 & 10.391 – The proposal ensures protection from water or erosion with the delineation of the wetlands plus controlling the size of the lots and location of the houses. The unique scenic features and farmland are reasonably protected by the single-family house requirement.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw in that the design of the flag lots was done with the intent of preserving the agricultural assets of Amherst while allowing for additional housing.

Ted Rising moved to approve the petition, with conditions. Susan Pynchon seconded the motion.

Zoning Board Decision:

For all of the reasons stated above, the Board voted unanimously to renew Special Permit ZBA FY2002-00034, approval of two flag lots, under Sections 3.2832 and 6.3 of the Zoning Bylaw, at 315 Potwine Lane (Map 23A, Parcel 21, R-O and R-LD/FC Zones), with conditions.

TOM SIMPSON

TED RISING

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Michael Gold to renew Special Permit ZBA FY2002-00034, approval of two flag lots, under Sections 3.2832 and 6.3 of the Zoning Bylaw, at 315 Potwine Lane (Map 23A, Parcel 21, R-O and R-LD/FC Zones), subject to the following conditions:

1. The flag lots shall be configured as shown on the plan approved at the public hearing of August 1, 2002 and on file in this office.
2. One driveway shall be created and shared by the two lots.
3. Each lot shall be restricted to a single-family dwelling.
4. Prior to construction, the applicant shall submit to the ZBA the updated Order of Conditions, issued by the Conservation Commission.
5. Prior to construction, the applicant shall submit a site plan showing the location of the proposed house, lighting, the driveway location, drainage information related to the construction and driveway, and any plantings associated with the construction.
6. Prior to construction, a Maintenance Plan concerning the care of the common driveway shall be submitted to the Board for the record.
7. This Special Permit is subject to Section 14 of the Zoning By-Law, Phased Growth. Development authorization is available as of March, 2005.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE